

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA, MUMBAI
CORAM: S. RAMAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11(1), 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, in the matter of Active Rural Development India Limited (CIN:U45200MP2011PLC026581; PAN:AAJCA8863D) and its Directors, viz. Shri Dilip Kumar Diwakar (DIN:00707567; PAN:ABGPD2004E), Shri PolakiUmashankar Rao (DIN:03533065; PAN:ATYPR9064L), Shri Ganesh Kumar Singh (DIN:03586509; PAN:BMSPS6948C), Ms VandanaSaha (DIN:03586527; PAN:DFDPS3198A)and its Debenture Trustees, viz. Active Debenture Trust (represented by Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a reference dated October 09, 2013 from the Department of Finance (Institutional Finance), Government of Bihar requesting SEBI to examine whether the activities of Active group of companies are legal or not. The Active group of companies stated include Active Rural Development India Limited (hereinafter referred to as “ARDIL”/ or “the company”).

The Government of Bihar also forwarded a copy of letter written by Shri D.K. Diwakar, Chairman and Managing Director of Active Group of companies addressed to District Magistrate of Purnia, Bihar.

A translation of some of the points of Shri Diwakar’s letter in Hindi reads “*we have been issuing secured debentures to public to raise capital to achieve our objectives of rural development and that since we are doing work in joint venture with partnership of public, we are registered with RoC and our group’s debentures are approved by RoC. On account of registration with RoC, ARDIL could issue debentures upto ₹10 crores secured by creating a charge on our movable/immovable assets and debentures were issued to people known to Active group. We are not supposed to take any approval from SEBI as permission is required for funds raised beyond ₹100 crores and our fund raising is upto ₹10 crores and our company is also not raising deposit under Bihar Depositors Protection Act, 2002*”.

- 2.1 As a matter of preliminary inquiry, SEBI, vide letter dated November 20, 2013 advised ARDIL to provide details of funds mobilized by it from the general public. In response, one of the Directors of ARDIL, viz., Sri Polaki Umashankar Rao, visited SEBI Indore office and submitted ARDIL's reply vide letter dated December 04, 2013. ARDIL vide the said letter *inter alia* submitted copies of Memorandum and Articles of Association, details of past and present directors, brochure cum application form, secured debentures certificate issued to subscriber, audited financial statements for financial year 2011-12 and 2012-13, income tax returns for financial year 2011-12 and 2012-13, etc. ARDIL further informed that that they were co-ordinating with RoC, Gwalior and were in the process to redeem their liability within February 15, 2014. It was also informed that they are dissolving the Debenture Trust within February 15, 2014 and in this regard, they have filed Form 17 with RoC-Gwalior for dissolution of Debenture Trust. ARDIL provided a copy of a letter dated December 03, 2013 addressed to RoC, Gwalior (in response to RoC's letter dated October 11, 2013) informing of their decision to dissolve the Debenture Trust.
- 2.2 The Director, Shri Polaki Umashankar Rao also made a written submission vide letter dated December 04, 2013 wherein *inter alia* he informed that ARDIL had raised ₹1,35,50,000/- from 2500 investors (approximately) from Bihar and West Bengal, the money was raised under secured debentures for the purpose of business operation of the company and that additional information would be submitted in next fourteen days.
- 2.3 Thereafter, ARDIL vide letter dated December 23, 2013 *inter alia* provided copies of some Board Resolutions, addresses of four offices, High Court order dated October 30, 2013 wherein the Collector, Patna, was directed to ensure that ARDIL's business premises at Mokama, which was locked and sealed by the Block Development Officer (BDO), Mokama on April 27, 2013, was opened within a fortnight of production of a copy of the order, etc. ARDIL also submitted "*we are in process to redeem debentures and we had refunded the money to some investors and the update list of investors and trial balance (unaudited figure) will be sent to you shortly*".
- 2.4 As no further information was received from ARDIL, SEBI vide letter dated January 29, 2014 made a reference to the visit of their Director, Shri Polaki Umashankar Rao and advised ARDIL to furnish *inter alia* the following information in respect of collection of funds through the issue of debentures, viz.:-

- a. Date of opening and closing of debenture issue;
- b. Name and address of person(s) to whom debentures were allotted, with details including face value of debenture, number of debenture allotted, date of allotment, distinctive number, etc;
- c. To provide details regarding date of charge creation in RoC, charge identification number, etc;
- d. Amount mobilized by issue of debentures till date and amount refunded to investors;
- e. To indicate whether the persons to whom debentures were allotted were still the holders of these debentures and details of debentures transferred by allottees, if any;
- f. Names and addresses of debenture trustees and whether these trustees are registered with SEBI;
- g. Details of persons managing the affairs of Active Debenture Trust;
- h. Details of properties secured against the charge of ₹10 Crore registered for the secured debenture issue on September 05, 2011 and valuation report for these properties.

2.5 In response, ARDIL vide letter dated February 27, 2014 *inter alia* submitted that the company mobilized an amount of ₹1,35,50,000/- through the issue of debentures. ARDIL further submitted *“that the company were in the process of redeeming the liability and for this we were in coordination with RoC office Gwalior. So, the process of redemption was accelerated particularly after 30th September 2013, the date on which the Hon’ble District Court Patna had passed an order in Mokama PS case whereby the police was ordered not to take any coercive steps against the directors of the company but after rejection to the said non-corrosive order on 6th of January 2014, the directors of the company are apprehending their arrest by the police hence unable to monitor / supervise the process properly, consequently the same has become slow. Office of the company shut down so, we are not in a position to furnish detailed information at the moment...”* It was also informed that “Active Debenture Trust” was managed by Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh. No further information has been received subsequently from ARDIL and its Directors.

3. I have perused the material available on record i.e. the reference received from the Government of Bihar and information/documents provided thereto, correspondence exchanged between SEBI, ARDIL and its Directors and information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. On an examination of the same, it is observed that—

- i. ARDIL was incorporated on August 12, 2011 with the RoC, Gwalior under CIN U45200MP2011PLC026581 with its registered office at U.F.T Road, Ranjhi, Jabalpur- 482005 (Madhya Pradesh). Subsequently, the registered office address was changed from March 12, 2012 to Bardadeeh Chowk, Mukhtiyar Gang, Rama Krishna Aasram, Satna:- 485001 (Madhya Pradesh) and from December 20, 2012 to C/o Sachin Vishwakarma, House No. 290, Satna Building, Malviya Chowk, Jabalpur, Madhya Pradesh-482002.
- ii. The present Directors in ARDIL are Shri Dilip Kumar Diwakar (DIN:00707567; PAN:ABGPD2004E), Shri Polaki Umashankar Rao (DIN:03533065; PAN:ATYPR9064L) and Shri Ganesh Kumar Singh (DIN:03586509; PAN:BMSPS6948C). Ms Vandana Saha (DIN:03586527; PAN:DFDPS3198A) was the Director of ARDIL from 12.08.2011 to 18.04.2013.
- iii. RoC, Gwalior vide certificate dated September 07, 2011 registered a charge of ₹10 crores created by ARDIL in favour of Active Debenture Trust.
- iv. As per the audited financial statements for the financial year 2012-13, it is noted that ARDIL had issued 130350 debentures of ₹100 each aggregating ₹1,30,35,000 as on March 31, 2012 and this figure increased to ₹ 1,35,50,000 as on March 31, 2013 (1,35,500 debentures of ₹100 each).
- v. A perusal of the copy of Minutes of the Meeting of the Board of Directors of ARDIL held on August 20, 2011 *inter alia* states, “Resolved that the Board of Directors be and is hereby authorized and shall be deemed to have always been so authorized to raise or borrow from time to time at its discretion by issue of secured redeemable non-convertible debentures of Rs.100/- each up to a limit of Rupees Ten Crores.” Further, the copy of Minutes of the Meeting of the Board of Directors of ARDIL held on September 05, 2011 *inter alia* states, “Resolved that in terms of the Board Meeting held on 20.08.2011 and in terms of approval obtained from the shareholders in the Extra Ordinary General Meeting held on 05.09.2011 at 10.00 am, the Board is hereby issuing Secured Redeemable Non-convertible Debentures with the terms and condition laid down before the meeting....”.

- vi. The terms and conditions as indicated in the Secured Debentures Certificate *inter alia* state “*Active group’s mission is to increase computer education, healthcare awareness and general public utility products through Educational institutes and industrial units by using the received deposited capital / investments from general public in the shape of Secured Debentures, and to distribute the profits among the investors as a dividend and bonus by selling the products and services. As such deposits of general public will be 100% safe and secure. Deposited capital is invested in Agro Projects & Industries under the programme of rural development which is a glaring example of private initiative in combating challenges of climate control too.*”
- vii. As per the brochure cum application form provided by ARDIL, the terms and conditions of the *Non-Convertible Redeemable Secured Debentures* Issue are as follows:

“

Plan		S	E	C	U	R	E	D
AMR 115	Redemption period	1 yr	3 yrs	5 yrs	7 yrs	10 yrs	12 yrs	16 yrs
Issue price minimum 10 debentures	Amount invested	1000	1000	1000	1000	1000	1000	1000
@Rs.100/- each i.e.	Dividend	120	540	1200	2100	4200	9360	15360
Rs. 1000/-	Cumulative Value	1120	1540	2200	3100	5200	10360	16360

Any member of “Active Pariwar Katihar” could purchase Active unit (s) in the shape of Secured Debentures on submission of Application form with relevant documents and stamp size colour photographs.

Individuals, (HUF), Corporate Bodies, Trusts, Partners Firms, Minor (Through Guardian), Institutions, Co-operative Bodies etc. can apply...”

- viii. The Director of ARDIL, Shri Polaki Umashankar Rao, in his written submission had stated that ARDIL had raised ₹1,35,50,000 from 2500 investors (approximately) from Bihar and West Bengal and that the money was raised under secured debentures for the purpose of business operation of the company.
- ix. As per the list of debenture holders enclosed with Form 20B (Form for filing annual returns) for AGM dated September 30,2013 obtained from *MCA 21 Portal*, the total amount mobilized through debentures is ₹1,35,50,000/-and the number of debenture holders is 1524 at the end of the financial year 2012-13 as detailed below:

Sr. No.	Month/Year	No. of Investors
1	Nov-11	227
2	Dec-11	354
3	Jan-12	357
4	Feb-12	263
5	Mar-12	293
6	Mar-13	30
	Total	1524

- x. As per the details mentioned above, ARDIL had allotted *Non-Convertible Redeemable Secured Debentures* ("*Offer of NCDs*") to approximately 2500 investors (1524 investors as per the list of debenture holders attached with Form 20B) and the amount mobilized as on March 31, 2013 was approximately ₹1.36 Crores.
4. In the context of the abovementioned details of the *Offer of NCDs*, the issue for determination in the instant matter is whether the mobilization of funds by ARDIL through the aforesaid, is in accordance with the provisions of the SEBI Act, 1992 ("**SEBI Act**") read with the SEBI (Issue and Listing of Debt Securities), Regulations, 2008 ("**Debt Securities Regulations**"); the Companies Act, 1956.
5. I note that the jurisdiction of SEBI over various provisions of the Companies Act in the case of public companies, when they issue and transfer securities at the relevant time flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 of 2011) (Judgment dated August 31, 2012)*** (hereinafter referred to as the "***Sahara Case***"), had observed:
- "We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."*
6. In this regard –

- i. Reference is also made to Sections 67(1) and 67(3) of the Companies Act, 1956, which are reproduced as under:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation

...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

- ii. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in the *Sahara Case* observed:

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or

invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ...

Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation. ...

I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ..."

- iii. In the instant matter, for ascertaining whether the *Offer of NCDs* is a public issue or an issue on private placement basis in accordance with Section 67 of the Companies Act, 1956, the number of subscribers is of utmost importance.
 - a. It is observed from the audited financial statements and written submission of Shri Polaki Umashankar Roa, Director that ARDIL had allotted *Non-Convertible Redeemable Secured Debentures* to approximately 2500 investors (1524 investors as per the list of debenture holders attached with Form 20B obtained from *MCA 21 Portal*) and the amount raised as on March 31, 2013 is approximately ₹1.36 Crores.
 - b. Although the *Offer of NCDs* as stated in the brochure cum application form are offered to members of "Active Pariwar Katihar" by ARDIL, it is noted from the terms and conditions indicated in the Secured Debenture Certificate issued by ARDIL that deposit towards debentures are taken from general public. Further,

although the *Offer of NCDs* is stated in the brochure cum application form to be “*For private circulation within the members only*” it is observed from the terms and conditions indicated in the brochure cum application form that “*Individuals, (HUF), Corporate Bodies, Trusts, Partners Firms, Minor (Through Guardian), Institutions, Co-operative Bodies etc. can apply...*” Such a generalized category of investor(s) cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act.

- c. It is thus apparent from the facts available on record that the said issuance of debentures was nothing but an issue of debentures to the general public and merely stating the issue as a private placement shall not make it as such. ARDIL failed to give the year wise number of investors to whom it allotted the debentures despite being given several opportunities to do so. The fact remains that ARDIL allotted debentures to 2500 investors (1524 investors as per the list attached with Form 20 B) which is way beyond the limit of 49 persons prescribed under the provisions of the Companies Act. In view of the above stated facts, the *Offer of NCDs* by ARDIL *prima facie* qualifies as a public issue of securities under the *first proviso* to Section 67(3) of the Companies Act, 1956, which has been elucidated by the Hon'ble Supreme Court of India in the *Sahara Case*.
- d. In addition, ARDIL is not stated to be a non-banking financial company or a public financial institution within the meaning of Section 4A of the Companies Act and therefore, is not covered under the *second proviso* to Section 67(3).
- e. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, Section 67 of that Act, so far as it relates to issue and transfer of securities, shall also be administered by SEBI.

7. I note that –

- i. From the abovementioned para, it will follow that since the *Offer of NCDs* is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. In this regard, reference is made to Sections 73 of the Companies Act, 1956, of which sub-Sections (1), (2) and (3) are relevant for the instant case, which is reproduced as under:

"73. (1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) Where a prospectus, whether issued generally or not, states that an application under subsection (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

***Provided** that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.*

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub- section (2); and if default is made in complying with this sub- section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees."

- ii. In the *Sahara Case*, the Hon'ble Supreme Court of India also examined Section 73 of the Companies Act, 1956, wherein it observed that –

"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act.

Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons.

...

... Section 73(2) says that every company and every director of the company who is an officer in default, shall be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed. The scope of the above mentioned provisions came up for consideration before this Court in Raymond Synthetics Ltd. & Ors. V. Union of India (supra), wherein the Court held that in a case where the company has not applied for listing on a stock exchange, the consequences will flow from the company's disobedience of the law, the liability to pay interest arises as from the date of receipt of the amounts, for the company ought not to have received any such amount in response to the prospectus. I am, therefore, of the view that since Saharas had violated the listing provisions and collected huge amounts from the public in disobedience of law, SEBI is justified in directing refund of the amount with interest."

- iii. Having regard to the abovementioned observations of the Hon'ble Supreme Court of India, since the Offer of NCDs is *prima facie* a public issue in accordance with the provisions of the Companies Act, 1956, the same will attract the requirement of compulsory listing before a recognized stock exchange in terms of Section 73(1) of the Companies Act, 1956 and also compliance with provisions of Sections 73(2) and 73(3) of that Act.
- iv. In the facts of the instant case, it *prima facie* appears that ARDIL has violated the provisions of Section 73 of the Companies Act, 1956, in respect of the Offer of NCDs.

8. Under Section 2(36) read with Section 60 of the Companies Act, 1956, a company needs to register its prospectus with the RoC, before making a public offer or issuing the prospectus. As per the aforesaid Section 2(36), “*prospectus*” means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As mentioned above, since the *Offer of NCDs* was made to fifty persons or more, it has to be construed as a public offer. Having made a public offer, ARDIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. In the instant case, there is no evidence on record to indicate whether or not ARDIL has filed a prospectus. In view of the same, I find that *prima facie*, ARDIL has not complied with the provisions of Section 60 of Companies Act, 1956.
9. Under Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. Based on the material available on record, I find that ARDIL has not complied with the provisions of Section 56(1) and 56(3) of the Companies Act, 1956 and therefore *prima facie*, has violated the aforesaid provisions.
10. Under Section 117B of the Companies Act, 1956, no company shall issue a prospectus or a letter of offer to the public for subscription of its debentures, unless it has, before such issue, appointed one or more debenture trustees for such debentures and the company has, on the face of the prospectus or the letter of offer, stated that the debenture trustee or trustees have given their consent to the company to be so appointed. Further, under Section 117C of the aforesaid Act, where a company issues debentures, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed. Based on the material available on record, I find that ARDIL has not complied with the provisions of Sections 117B–C of the Companies Act, 1956 and therefore, has *prima facie* violated the aforesaid provisions.

11. In addition to the above, reference may be made to the Debt Securities Regulations, which were framed by SEBI in exercise of its powers under Section 30 of the SEBI Act and are applicable to the public issue and listing of debt securities. It may be relevant to note that under the aforesaid Regulations, '*debt securities*' have been defined as '*non-convertible debt securities which create or acknowledge indebtedness, and include debenture...*' In this context, I find that ARDIL, through the *Offer of NCDs*, which is a public issue of debt securities, has *prima facie* violated the following provisions of the aforesaid Regulations, which contain *inter alia* conditions for public issue and listing of debt securities, viz.

- i. Regulation 4(2)(a) – *Application for listing of debt securities*
- ii. Regulation 4(2)(b) – *In-principle approval for listing of debt securities*
- iii. Regulation 4(2)(c) – *Credit rating has been obtained*
- iv. Regulation 4(2)(d) – *Dematerialization of debt securities*
- v. Regulation 4(3) – *Appointment of Merchant Banker*
- vi. Regulation 4(4) – *Appointment of Debenture Trustee*
- vii. Regulation 5(2)(b) – *Disclosure requirements in the Offer Document*
- viii. Regulation 6 – *Filing of draft Offer Document*
- ix. Regulation 7 – *Mode of disclosure of Offer Document*
- x. Regulation 8 – *Advertisements for Public Issues*
- xi. Regulation 9 – *Abridged Prospectus and application forms*
- xii. Regulation 12 – *Minimum subscription*
- xiii. Regulation 14 – *Prohibition of mis-statements in the Offer Document*
- xiv. Regulation 15- *Trust Deed*
- xv. Regulation 16- *Debenture Redemption Reserve*
- xvi. Regulation 17 – *Creation of security*
- xvii. Regulation 19 – *Mandatory Listing*
- xviii. Regulation 26 – *Obligations of the Issuer, etc.*

12. Upon a consideration of the aforementioned paragraphs, I am of the view that ARDIL is *prima facie* engaged in fund mobilising activity from the public, through the *Offer of NCDs* and as a result of the aforesaid activity has violated the aforementioned provisions of the Companies Act, 1956 (Section 56, Section 60 read with Section 2(36), Section 73, Section 117B, Section 117C) and the Debt Securities Regulations.

- 13.1 From the material available on record, it is observed that ARDIL created a charge of ₹10 Crores on September 05, 2011 and appointed *ActiveDebtenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* as the Debtenture Trustees for the *Offer of NCDs* by that company.
- 13.2 Section 12(1) of the SEBI Act states that: "*No... trustee of trust deed ... shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act*". Further, Regulation 7 of SEBI (Debtenture Trustees) Regulations, 1993 ("*Debtenture Trustees Regulations*"), provides that: "*no person should act as a debtenture trustee unless he is either –*
- i. a scheduled bank carrying on commercial activity; or*
 - ii. a public financial institution within the meaning of section 4A of the Companies Act, 1956; or*
 - iii. an insurance company; or*
 - iv. body corporate."*
- 13.3 Based on the material available on record, I find that *ActiveDebtenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* have acted as unregistered Debtenture Trustees, which amounts to violation of the abovementioned provisions of the SEBI Act read with the Debtenture Trustee Regulations.
14. SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 administrative authority on the subjects relating to public issue of securities is exclusively with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 over companies who issue *Non-Convertible Redeemable Secured Debtentures* to fifty persons or more, but do not comply with the applicable provisions of the aforesaid Companies Acts and the Debt Securities Regulations. Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by ARDIL and investors are not defrauded. ARDIL has raised an amount of ₹1.36 Crores from 2500 investors (1524 investors as per the list of debtenture holders attached with Form 20B obtained from *MCA 21 Portal*). It is also important to note that it intends to raise an

amount of ₹10 Crores through issue of *Non-Convertible Redeemable Secured Debentures* as stated in the Extracts of the Meeting of the Board of Directors of ARDIL held on August 20, 2011 as also the charge created by the company on its assets. Though ARDIL has contended that they have started the process of repayment to investors, no details have been provided. In view of all these factors, I find there is no other alternative but to take recourse through an interim action against ARDIL and its Directors along with its Debenture Trustees, viz. *Active Debenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* for preventing that company from further carrying on with its wrongful fund mobilising activity under the *Offer of NCDs*.

15. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with the Debt Securities Regulations and the Debenture Trustees Regulations, hereby issue the following directions –
- i. ARDIL shall forthwith cease to mobilize any fresh funds from investors through the *Offer of NCDs* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. ARDIL (CIN: U45200MP2011PLC026581; PAN:AAJCA8863D) and its Directors, Shri Dilip Kumar Diwakar (DIN:00707567; PAN:ABGPD2004E), Shri Polaki Umashankar Rao (DIN:03533065; PAN:ATYPR9064L), Shri Ganesh Kumar Singh (DIN:03586509; PAN:BMSPS6948C) and Ms Vandana Saha (DIN:03586527; PAN:DFDPS3198A) are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
 - iii. ARDIL and its abovementioned Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;
 - iv. ARDIL shall provide a full inventory of all its assets and properties;
 - v. ARDIL's abovementioned Directors shall provide a full inventory of all their assets and properties;

- vi. ARDIL and its abovementioned Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of NCDs*, without prior permission from SEBI;
 - vii. ARDIL and its abovementioned Directors shall not divert any funds raised from public at large through the *Offer of NCDs*, which are kept in bank account(s) and/or in the custody of ARDIL;
 - viii. ARDIL shall provide to SEBI the full list of investors of *Non-Convertible Redeemable Secured Debentures*, their addresses, telephone numbers, amount collected from each investor, etc;
 - ix. ARDIL shall provide to SEBI all information regarding repayments made to the holders of *Non-Convertible Redeemable Secured Debentures* including name of the debenture holder, address, amount mobilized, number of *Non-Convertible Redeemable Secured Debentures* issued, promised maturity amount with date of maturity, amount refunded and date thereof;
 - x. ARDIL shall furnish complete and relevant information within 21 days from the date of receipt of this Order;
 - xi. The Debenture Trustees, viz. *Active Debenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* are prohibited from continuing with their present assignment as debenture trustees in respect of the *Offer of NCDs* of ARDIL and also from taking up any new assignment or involvement in any new issue of debentures, etc. in a similar capacity, from the date of this Order till further directions.
16. The above directions shall take effect immediately and shall be in force until further orders.
17. The *prima facie* observations contained in Order are made on the basis of the material available on record i.e. the reference received from the Government of Bihar and information/documents provided thereto, correspondence exchanged between SEBI,

ARDIL and its Directors and information/documents obtained from the Ministry of Corporate Affairs' website i.e. 'MCA 21 Portal'. In this context, ARDIL and its abovementioned Directors are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including the following, should not be taken/imposed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of Non-Convertible Redeemable Secured Debentures* along with interest, if any, promised to investors;
 - ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
 - iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.
18. ARDIL and its abovementioned Directors, may, within 21 days from the date of receipt of this Order, file their replies, if any, to this Order and may also indicate whether they desire to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
19. Similarly, the Debenture Trustees, viz. *Active Debenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)*, are advised to show cause as to why suitable directions/prohibitions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act including restraining them from accessing the securities market and further restraining them from buying, selling or dealing in securities, in any manner whatsoever, for an appropriate period should not be issued.
20. The Debenture Trustees, viz. *Active Debenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* may, within 21 days from the date of receipt of this Order, file their reply, if any, to this Order and may also indicate whether they desire to avail an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.

21. This interim order cum show cause notice is without prejudice to the right of SEBI to take any other action that may be initiated against ARDIL and its abovementioned Directors;its Debenture Trustees, viz. *ActiveDebenture Trust (represented by its Trustees, viz. Shri Abhinash Kumar Jha and Shri Jagdish Kumar Singh)* in accordance with law.

Place: Mumbai
Date: June 25, 2015

S. RAMAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA